HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 20432 of 2006

Date: 23.8.2007

Between:

G. Venkatappa Reddy

....Petitioner

and

The Collector and District Magistrate,
Guntur and others

....Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 20432 of 2006

O R D E R:

The petitioner is the Sarpanch of Vallabhapuram Gram Panchayat, Guntur District. There exists an irrigation canal within the limits of the Gram Panchayat. The grass that is grown on the bunds of the canal, used to be auctioned by the Gram Panchayat, from time to time. In the recent past, the Water Users' Associations came to be constituted under the provisions of the A.P. Farmers Management Irrigation System Act, 1997 (for short 'the Irrigation System Act'). The Water Users' Association of the concerned Irrigation System made a claim for sale of the grass on the canal bunds. It was in this context that the District Collector-the 1st respondent issued proceedings dated 16.9.2006, permitting the Water Users' Associations in the District to auction grass on the bunds and to appropriate the usufruct of the miscellaneous properties within their jurisdiction, for augmenting the income to the concerned Organizations. The petitioner challenges the said proceedings.

When the Writ Petition was pending, the 1st respondent addressed a letter dated 5.10.2006 to the Government stating that as long as Section 80 of the A.P. Panchayat Raj Act (for short 'the Act') is not amended, the Gram Panchayats cannot be denied of their right over such water bodies or the income derived therefrom. Drawing

support from this communication, the petitioner contends that the Gram Panchayat cannot be denied the benefit of selling the grass on the bunds of the canal.

On behalf of the respondents, a counter affidavit is filed. It is stated that though the Water Bodies and other allied properties vest in the Gram Panchayat under Section 80 of the Act, in view of Section 22 of the Irrigation System Act, a totally different legal regime has come into existence.

Heard the learned counsel for the petitioner and the learned Government Pleader for Irrigation.

The apparent conflict between Section 80 of the Act and Section 22 of the Irrigation System Act had come into existence. The Legislature ought to have evinced due care to avoid such conflict by causing necessary amendments to the Act or by adding a **N*on obstante*** clause to Section 22 of the Irrigation System Act.

The dispute is no longer ***res integra***. A Division bench of this court in W.A.No.521 of 2007 dealt with this very question at length. The scope and ambit of the relevant provisions of the Panchayat Raj Act on the one hand, and the Irrigation System Act on the other hand, was considered and in its judgment dated 26.6.2007, held that it is the Irrigation Department, and not the Panchayat Raj Department, in whom the canals and the canal bunds vest.

In that view of the matter, no relief can be granted to the petitioner. The writ petition is accordingly dismissed. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Date: 23.8.2007
cvm